

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 8, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2012AP598-CR  
2012AP599-CR**

**Cir. Ct. Nos. 2007CF226  
2008CF164**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**WANDA Y. PAUER,**

**DEFENDANT-APPELLANT.**

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APPEALS from judgments and orders of the circuit court for Oneida County: MARK MANGERSON, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. In these consolidated appeals, Wanda Pauer appeals from judgments sentencing her after revocation of her probation for operating while intoxicated (sixth offense) and felony bail jumping. She also

appeals from orders denying her postconviction motion challenging the circuit court's exercise of sentencing discretion. We see no misuse of discretion, and we affirm.

¶2 Pauer argues that the circuit court did not consider the gravity of the offenses during her sentencing after revocation. In order to resolve this claim, we must start with Pauer's original sentencing.

¶3 In 2008, Pauer pled no contest to operating while intoxicated (sixth offense) and felony bail jumping. At the plea hearing, Pauer admitted the factual basis for her pleas. The sentencing recommendation was probation with one year in jail as condition time. The court expressed concern that Pauer had been in court for many years and questioned whether she could be treated while on probation as that had not been successful in the past.

¶4 At the 2009 sentencing, Pauer admitted her addiction to alcohol and drugs and acknowledged that she needed to change her life. The court explained that it ordered a presentence investigation report because Pauer had a lengthy history in the criminal justice system and the court "wanted to try to get a handle on your criminal career ...." The court noted Pauer's extensive record of prior offenses dating back to 1995, including alcohol-related offenses. The court described Pauer's history as "long and lurid," arising from her use of alcohol and disorderly conduct, and her failure to take responsibility for her conduct. While the court somewhat reluctantly accepted the probation recommendation, the court noted that Pauer's persistent evasion of responsibility for her conduct did not help her. The court noted:

For years you have been doing this with always an excuse, always a problem. It's my past, things people did to me, gosh, that was kind of a mistake or I was angry that night

because of this and it was justified and always a bob and weaving. As long as you keep doing that, things aren't going to change and then somebody will have to lock you in prison just to keep everybody else in the neighborhood safe.

The court declined to imprison Pauer, but it told her “you’re pretty much at the end of the rope here.” The court told her she had to stay away from substances. For the operating while intoxicated conviction, the court withheld sentence and placed Pauer on three years of probation with a year in the county jail. The court also placed Pauer on concurrent probation for the felony bail jumping.

¶5 In March 2011, Pauer’s probation was revoked because she violated several of her probation rules, including the prohibition on drinking alcohol. The original sentencing judge conducted the sentencing after revocation. Pauer’s trial counsel noted that the revocation summary showed that nothing had changed for Pauer and her drug and alcohol problems continued to manifest themselves in the community. Pauer’s counsel argued for a sentence that would be “long enough to insure that she receives treatment for these issues.”

¶6 In sentencing Pauer, the circuit court again considered Pauer’s lengthy criminal history related to her untreated substance abuse and her numerous, unsuccessful terms on probation. Despite probation, and the programs and treatment offered to Pauer over many years, “we still have some of the same conduct that we were trying to prevent.” The court also noted Pauer’s probation rule violations. The court stated that “we have a situation where she’s still using substances, she’s still not being honest with herself and with others about the significance of her AODA problems and related mental health issues, and she’s into the same kind of conduct she was in the past.” The court continued, “We, in

essence, are dealing with the same individual we've been dealing with for 15 or 16 years and we haven't made enough success in the system."

¶7 The sentencing court summarized Pauer's circumstances: long-standing addiction, mental health issues, bad associations and high likelihood of reoffending. The court found that the only way to rehabilitate Pauer was to incarcerate her because Pauer cannot be successful in the community. The court noted that Pauer needed a significant period of confinement to address her treatment and programming needs along with a significant period of subsequent supervision in the community. Therefore, the court imposed a six-year sentence for operating while intoxicated (sixth offense): three years of confinement and three years of extended supervision. The court imposed a consecutive three-year term for felony bail jumping: one year of confinement and two years of extended supervision. The court stated that Pauer needed "four years initial confinement for her to work her way out of the system if she's going to get serious finally, and I think we definitely need all that extended supervision to make sure her transition to the community is successful."

¶8 Postconviction, Pauer sought resentencing because the circuit court did not consider the gravity of the offenses at sentencing. The court conceded that at neither the original sentencing nor the sentencing after revocation did it note the specifics of the crimes Pauer committed or the underlying facts of the crimes. Nevertheless, the court found that it did not mechanistically apply the three primary sentencing factors: the gravity of the offenses, the defendant's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Rather, the court found that it considered various sentencing factors, including addiction issues, history of criminal offenses, and failure on probation, and it stated why a sentence of some length was appropriate.

The court found that Pauer’s history of law-breaking, drinking, and using drugs, and never overcoming these difficulties “just swallowed up all the other concerns that one would normally address under *Gallion*.”

¶9 On appeal, Pauer argues that the circuit court erroneously exercised its sentencing discretion because it failed to consider the gravity of the offenses. While the court did not name the offenses or discuss the underlying facts, the court discussed the conduct which led to the offenses and set out its various valid sentencing considerations. The court was familiar with Pauer. *State v. Walker*, 2008 WI 34, ¶15, 308 Wis. 2d 666, 747 N.W.2d 673. Clearly, the circuit court brought its experience with Pauer in the original sentencing to the sentencing after revocation.

¶10 The discretion of the sentencing judge must “be exercised on a ‘rational and explainable basis.’” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The weight to be given the various factors is within the circuit court’s discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977).

¶11 The circuit court offered a rational and explainable basis for its sentencing decision on both convictions. It cannot be seriously argued that a sixth offense of operating while intoxicated is other than a grave offense. It is beyond dispute that punishing and deterring drunk driving is a powerful and well-established public interest. *Strenke v. Hogner*, 2005 WI App 194, ¶21, 287 Wis. 2d 135, 704 N.W.2d 309. The court hardly ignored the gravity of the offenses at the sentencing after revocation. Rather, the gravity of the offenses and Pauer’s history of criminal offenses and substance abuse led the court to impose the sentences it chose.

*By the Court.*—Judgments and orders affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)5. (2011-12).

